

RICHARD O. DALE ET AL.

IBLA 78-460 Decided December 6, 1978

Appeal from that portion of a decision of Montana State Office, Bureau of Land Management, requiring purchase money for small tract application M 23296.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act: Repealers--Small Tract Act: Generally

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1976).

APPEARANCES: Richard O. Dale, Claude O. Dale, Jr., Hal J. Dale, and Mary Dale Siprelle, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Richard O. Dale, Claude O. Dale, Jr., Hal J. Dale, and Mary Dale Siprelle have appealed from that portion of a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 26, 1978, requiring them to pay \$5,000 for the purchase price of a small tract

prior to preparation of the patent for the tract. The application for purchase (M 23296) of this tract was filed pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970).

In 1957 Claude O. Dale, Sr., Cecil L. McClure (both deceased and predecessors-in-interest to appellants), and Richard O. Dale filed an application to purchase a small tract that had been the family homesite for approximately 50 years at that time. The Dale family also had a placer mining claim which embraced all of the buildings and improvements of the original homesite. In 1959 the Claude O. Dale family relinquished the mining claim. A patent was issued in 1965 for 5 acres of land now described as lot 11, sec. 3, T. 3 S., R. 5 W., Principal meridian, Montana. Appellant and BLM thought that all of the improvements were within the boundaries of the land which was patented.

In 1971, a mining company conducting mining and milling activities in the vicinity of the Dale family homesite had the area surveyed and found that some of the buildings and improvements were not included within the boundaries of lot 11. This was confirmed by a cadastral surveyor who examined the land.

On September 29, 1972, Richard O. Dale and Alice A. Dale filed an application M 23296 to purchase 2.50 acres of land under the Small Tract Act described as lot 10, sec. 3, T. 3 S., R. 5 W., Principal meridian, Montana, in order to give them patent to land which embraced the improvements outside of lot 11. This application was amended to name appellants as the applicants and to include 3.74 acres. The lot containing the improvements was subsequently described as lot 17. BLM issued a decision on April 26, 1978, approving appellants' application to purchase and stated that the purchase price for this tract is the appraised price amounting to \$5,000.

In their statement of reasons, appellants challenge BLM's appraisal of December 31, 1977. Appellants point to the fact that BLM caused an initial delay of several years by amending the application to include 3.74 acres instead of the 2.5 acres originally applied for.

Appellants argue that had it not been for an error in the land description, the matter would have been resolved at the time of the original approval of lot 11. Appellants note that the appraised value of the land was \$120 per acre at the time of the first transaction and state that it has taken 18 years to accomplish what BLM intended to do in 1960. Therefore, appellants reason that the additional 3.74 acres should be sold for \$448.80 rather than \$5,000.

[1] The Small Tract Act, supra, was repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, effective October 21, 1976. Accordingly, BLM is not thereafter authorized to approve appellants' application to purchase a tract under the Small Tract Act, supra.

Section 316 of FLPMA provides that patents or documents of conveyance may be corrected. 43 U.S.C. § 1746 (1976), Correction of Conveyance documents, reads as follows:

The Secretary may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

In light of this provision in FLPMA, we shall remand the case to the Montana State Office to determine if the land encompassing the improvements which were intended to be accommodated by patent 25-66-0023, issued November 4, 1965, can be included within five acres, not exceeding 330 feet east-west, and 660 feet north-south, so situated that 2-1/2 acres are within the east half of the present lot 11, and the remaining 2-1/2 acres, more or less, are in the westerly portion of lot 17. If the situation of the improvements on the ground meets this condition, the State Office is to determine if action to correct patent 25-66-0023 may be taken under section 316 of FLPMA, bearing in mind the limitations in the Small Tract Act under which the patent was issued. In view of our determination herein, we find it unnecessary to resolve the question of cost of the land in issue.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded to the Montana State Office for consideration consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

